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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
JAN 31 2 56 PM '02

January 31, 2002

AOR
2002-12

VIA FEDERAL EXPRESS

Lawrence H. Norton
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington D.C. 20463

Request for Disaffiliation:
American Medical Security, Inc. and
Blue Cross & Blue Shield United of Wisconsin

Dear Mr. Norton:

On behalf of American Medical Security, Inc. ("AMS"), we request an advisory opinion on the application of the Federal Election Campaign Act of 1971, as amended, and the Commission's regulations to the affiliation between the American Medical Security, Inc. PAC (the "AMS PAC") and the Blue Cross & Blue Shield United of Wisconsin Political Action Committee (the "BCBS PAC"). Due to a series of organizational changes to the corporate structure of their respective sponsoring organizations, the AMS PAC and the BCBS PAC are no longer financed, maintained or controlled within a common organization. With this corporate restructuring, the AMS PAC and the BCBS PAC are now connected to two separate and independent sponsoring organizations and, as a result, the committees are no longer separate segregated funds ("SSFs") subject to the Commission's rules on affiliation.

THE SEPARATE SEGREGATED FUNDS

The AMS PAC (FEC ID: C00283457) is the separate segregated fund of AMS, its sponsoring organization, first registered with the Commission on August 30, 1993. The BCBS PAC (FEC ID: C00135202) is the separate segregated fund of Blue Cross & Blue Shield United of

Wisconsin ("BCBS"), its sponsoring organization, first registered with the Commission on September 8, 1980.

In 1996, the AMS PAC and the BCBS PAC each filed an amended "Statement of Organization" with the Commission listing each other's sponsoring organization as a connected organization and, as a result, the AMS PAC and the BCBS PAC became affiliated committees. As SSFs of two entities within one corporate organization, the AMS PAC and BCBS PAC met the criteria for affiliation set forth in 11 C.F.R. § 100.5(g) and were subject to the requirements in 2 U.S.C. § 441a(a)(5).¹

Now, after several subsequent changes in corporate structure and the most recent corporate reorganization, AMS requests that the Commission review the relationship between AMS and BCBS and conclude that, under the Commission's criteria, the AMS PAC is no longer affiliated with the BCBS PAC.

CORPORATE ORGANIZATION AND RELATIONSHIPS

Pre-Affiliation History

In 1988, American Medical Security, Inc., later known as American Medical Security Group, Inc. ("AMS-Old"), the predecessor to AMS, and United Wisconsin Services ("UWS") entered into a joint venture agreement under which AMS-Old would market and administer the health insurance products underwritten by UWS's insurance company subsidiaries. Pursuant to that joint venture, UWS obtained a 12 percent equity interest in AMS-Old. At the time, UWS was solely owned by a parent corporation, BCBS. *See* Exhibit A-1, 1988 Organization Chart.

In 1991, UWS completed an initial public offering. After subsequent public offerings in 1994 and 1996, BCBS no longer was the sole owner of UWS. Instead, its ownership interest in UWS had been reduced from 100 percent in 1988 to 38 percent by 1996.

In 1995, as a result of a corporate reorganization, AMS-Old changed its name to "American Medical Security Group, Inc." and the administrative operations formerly performed by AMS-Old were then performed by AMS-Old's wholly-owned subsidiary American Medical Security of Green Bay, Inc., which, at the same time, changed its name to "American Medical Security, Inc." ("AMS"). At that point, UWS directly owned 12 percent of AMS-Old and, indirectly, 12 percent of AMS. *See* Exhibit A-2, 1995 Organization Chart.

In 1996, UWS exercised its option under the joint venture agreement with AMS-Old to acquire the remaining 88 percent of AMS-Old. As a result of this acquisition, AMS-Old

¹ The BCBS PAC is also affiliated with a number of other SSFs sponsored by "Blue Cross & Blue Shield" entities in other states. The AMS PAC's affiliation with these committees is solely based on its affiliation with the BCBS PAC. Once the AMS PAC's affiliation with the BCBS PAC terminates, so too will its relationship with these other SSFs. *See* attached Exhibit B for a list of the committees affiliated with the BCBS PAC.

merged with and into UWS. As the surviving corporation, UWS indirectly (through a wholly-owned subsidiary holding company, American Medical Security Holdings, Inc.) became the parent company of AMS – which continued to market and administer the health insurance products underwritten by UWS's other insurance company subsidiaries. See Exhibit A-3, 1996 Organization Chart.

Following the 1996 merger between UWS and the AMS-Old, the AMS PAC and the BCBS PAC each filed an amended "Statement of Organization" with the Commission and listed AMS and BCBS (which owned 38 percent of UWS and, indirectly, 38 percent of AMS) as connected organizations for both SSFs.

Post-Affiliation History

BCBS and UWS continued to reorganize and restructure their corporate holdings after the 1996 merger. Prior to and for most of 1998, UWS's business consisted of two main components: the small group health insurance business operated by AMS, and the managed care and specialty product business operated by its other insurance subsidiaries. In May 1998, the board of directors of UWS approved a plan to spin off its managed care companies and specialty product businesses into a new and separate entity. In September 1998, UWS contributed all of its subsidiaries comprising the managed care and specialty products business to a newly created subsidiary, "UWS-New." In addition, it spun off UWS-New through a distribution of 100 percent of the issued and outstanding shares of UWS-New to UWS's shareholders. That is, as a result of the spin-off, all existing UWS shareholders became the owners of shares in a new publicly-traded company – UWS-New. See Exhibit A-4, 1998 Organization Chart.

In connection with the spin-off, UWS changed its name to "American Medical Security Group, Inc." ("AMSG") and UWS-New changed its name to "United Wisconsin Services, Inc." AMSG retained ownership of the small group health insurance products, including 100 percent ownership of AMS. After the spin-off and creation of a new entity in 1998, BCBS owned 38 percent of UWS-New and 38 percent of AMSG. The remaining 62 percent of both corporations were held by other public investors. *Id.*

On March 23, 2001, BCBS – which at the time owned 47 percent of UWS-New and 44 percent of AMSG – converted from a nonstock service insurance corporation to a stock insurance corporation. On account of this conversion, BCBS became a wholly-owned subsidiary of UWS-New. UWS-New then changed its name to "Cobalt Corporation" ("Cobalt"), and Cobalt now indirectly owns 45 percent of AMSG (through BCBS, which continues to exist as a wholly-owned subsidiary of Cobalt). And, AMSG indirectly owns 100 percent of AMS. See Exhibit A-5, 2001 Organization Chart.

Cobalt and AMSG are separately functioning and independently operating enterprises. Publicly-traded shares are available separately and individually for Cobalt and for AMSG. Each company has its own board of directors and officers with *no* overlapping membership or personnel between the two companies or any of their subsidiaries – including BCBS and AMS. Except

through its 45 percent indirect ownership interest in AMSG (through its wholly-owned subsidiary, BCBS), Cobalt has no interest or voice in the operation of AMSG. That is, except for those rights provided to all shareholders, Cobalt has no voice in the management or day-to-day operations of AMSG or its wholly-owned subsidiary, AMS. (For additional information on these two companies, see the enclosed 2001 annual reports – one for AMSG, one for Cobalt.)

AFFILIATION FACTORS AND ANALYSIS

All political committees (including separate segregated funds) established, financed, maintained or controlled by the same corporation, including any parent, subsidiary, branch, division, department, or local unit thereof, are deemed “affiliated.” See 11 C.F.R. 100.5(g)(2).

In the absence of certain automatically affiliated relationships such as a parent corporation and its subsidiary, Commission regulations provide for an examination of various factors in the context of an overall relationship to determine whether one company is an affiliate of another and, hence, whether their respective SSFs are affiliated with each other.

Advisory Opinion 1999-39; *see also* 11 C.F.R. 100.5(g)(4)(i) (discussing the Commission’s ability to examine the relationships between corporations sponsoring SSFs, or the relationship between a corporation and an SSF sponsored by another organization). These factors guide a case-by-case analysis:

Ownership of a Controlling Interest

Does a sponsoring organization of one committee own a controlling interest in the voting stock or securities of the sponsoring organization of another committee? See 11 C.F.R. 100.5(g)(4)(ii)(A).

Cobalt indirectly owns 45 percent of AMSG – through Cobalt’s wholly-owned subsidiary BCBS, the sponsoring organization of the BCBS PAC. And, AMSG owns 100 percent of its subsidiary AMS, the sponsoring organization of the AMS PAC.

While BCBS’s 45 percent ownership interest may appear material, it is not *per se* controlling. Moreover, that interest is significantly less than the vote required to carry proposals at AMSG’s shareholder meetings – where 98.8 percent, 98.7 percent, and 97.9 percent of the shares were represented at its meetings in 1999, 2000, and 2001 respectively. The remaining 55 percent of AMSG’s issued and outstanding voting securities are held by numerous public investors. As a result, BCBS (or its parent, Cobalt) does not have a controlling interest in the voting stock or securities of AMSG, or, indirectly, AMS.

Ability to Direct or Participate in Governance

Does a sponsoring organization or its committee have the authority or ability to direct or participate in the governance of another sponsoring organization or its committee through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures? *See* 11 C.F.R. 100.5(g)(4)(ii)(B).

Neither Cobalt, BCBS, or the BCBS PAC (the "BCBS entities") has any ability to direct or participate in the governance of AMSG, AMS or the AMS PAC (the "AMS entities") – through provisions of the AMS entities' constitution, bylaws, contracts, or rules, or through formal or informal practices or procedures. Similarly, the AMS entities have absolutely no ability to direct or participate in the governance of the BCBS entities.

Ability to Control Officers

Does a sponsoring organization or its committee have the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members of another sponsoring organization or its committee? *See* 11 C.F.R. 100.5(g)(4)(ii)(C).

The BCBS entities have no authority or ability to hire, appoint, demote, or otherwise control the officers, or other decisionmaking employees or members of the AMS entities. Similarly, no AMS entity has control over the officers or decisionmaking employees of a BCBS entity. Instead, the authority or ability to hire, appoint, demote or otherwise control the officers and other decisionmaking employees resides exclusively within each organization's respective companies.

Present and Past Control or Overlap Among Membership, Officers and Employees

Does a sponsoring organization or its committee have a common or overlapping membership with another sponsoring organization or its committee that indicates a formal or ongoing relationship between the sponsoring organizations or committees? Are there common or overlapping officers or employees? Any relationship between members, officers or employees that indicates the creation of a successor entity? *See* 11 C.F.R. 100.5(g)(4)(ii)(D-F).

There is no overlap between the AMS entities or the BCBS entities on their respective boards of directors or among the officers or employees of the two organizations.² No director serves on the board of an AMS entity and a BCBS entity. None of the officers of a BCBS entity are officers of an AMS entity. In fact, no staff of an AMS entity is also an employee of a BCBS entity.

² Note, however, that there is overlap in membership of the board of directors, officers and employees between AMSG and AMS. As a wholly-owned subsidiary of AMSG, however, AMS is not asserting – nor does it need to assert for the purpose of this request for disaffiliation – that the two companies are not connected. Indeed, it is the AMSG-AMS relationship that further demonstrates a parent-subsidary relationship to which neither Cobalt nor BCBS is a party.

While there had been common membership on the UWS and BCBS boards of directors after the 1996 AMS-Old merger with and into UWS, any overlap gradually decreased after the 1998 corporate reorganization and spin-off that resulted in two separate companies with their own publicly-traded shares and boards of directors. And, by the time of the conversion of BCBS from a non-profit service insurance company to a for-profit stock corporation in March 2001, any common board membership had been eliminated. There is no longer any overlap of the board members between an AMS entity and a BCBS entity.

Funding

Does a sponsoring organization or its committee provide funds or goods in a significant amount or on an ongoing basis to another sponsoring organization or its committee, such as through direct or indirect payments for administrative, fundraising, or other costs? Or, if not provided directly, does a sponsoring organization or its committee cause or arrange for funds in a significant amount to be provided on an ongoing basis to another sponsoring organization or committee? *See* 11 C.F.R. 100.5(g)(4)(ii)(G-H).

The AMS entities and the BCBS entities maintain separate offices, personnel, information systems, and other assets. Operations of the AMS entities and the BCBS entities are wholly separate, and there is no cross-subsidization or funding of any sponsoring organization or committee. While service agreements between companies existed after the 1996 merger and pursuant to the 1998 spin-off and corporate reorganization, the last of these service agreements expired on August 31, 1999. Today, there are no service agreements between any AMS entity and any BCBS entity.

Any administrative or fundraising expenses incurred by the AMS PAC are paid solely by the AMS PAC or, as allowed by federal law, by AMS itself. The AMS PAC receives no funding for its administrative or fundraising expenses from a BCBS entity. Similarly, no AMS entity pays for the administrative or fundraising expenses of the BCBS PAC.

Role in Formation

Does a sponsoring organization or its committee or its agent have an active or significant role in the formation of another sponsoring organization or its committee? *See* 11 C.F.R. 100.5(g)(4)(ii)(I).

No BCBS entity had an active or significant role in the formation of the AMS PAC. While, arguably, BCBS had a role in the creation and formation of AMS's parent companies – including AMSG – these activities were unrelated to the government relations activities of AMS or campaign finance activities of the AMS PAC. That is, government relations, campaign contributions or other political activity and the very existence of the AMS PAC have not been a motivating factor for the mergers and corporate reorganizations by BCBS and UWS since 1996 – including the spin-off AMSG in 1998.

Pattern of Contributions

Do the sponsoring organizations or committees have similar patterns of contributions or contributors that indicate a formal or ongoing relationship between the sponsoring organizations or committees? See 11 C.F.R. 100.5(g)(4)(ii)(J).

Contribution and fundraising decisions by the AMS PAC and the BCBS PAC are made wholly independent of each other. There are no joint solicitations, and funds are not transferred between the two SSFs. There is no evidence of striking similar patterns of contributions to other committees – beyond those similarities expected by two SSFs operating in the same state and with a common interest in the regulation of the insurance and health care industries. Furthermore, both sponsoring organizations – AMS and BCBS – each has its own government relations departments and retain and supervise their own lobbyists.

CONCLUSION

Based on the facts set forth above, it should be clear that the sponsoring organizations of the AMS PAC and the BCBS PAC are separate and independent corporate entities. As distinct businesses, AMS and BCBS have their own boards of directors, officers and personnel – including separate government affairs departments and independent campaign finance activities by their respective SSFs. Because of the independence of each sponsoring organization and SSF as well as the lack of characteristics common to affiliated SSFs, the Commission should conclude that the AMS PAC and the BCBS PAC are no longer affiliated.

Please let us know if you have any questions regarding this matter or need any additional information.

Sincerely,

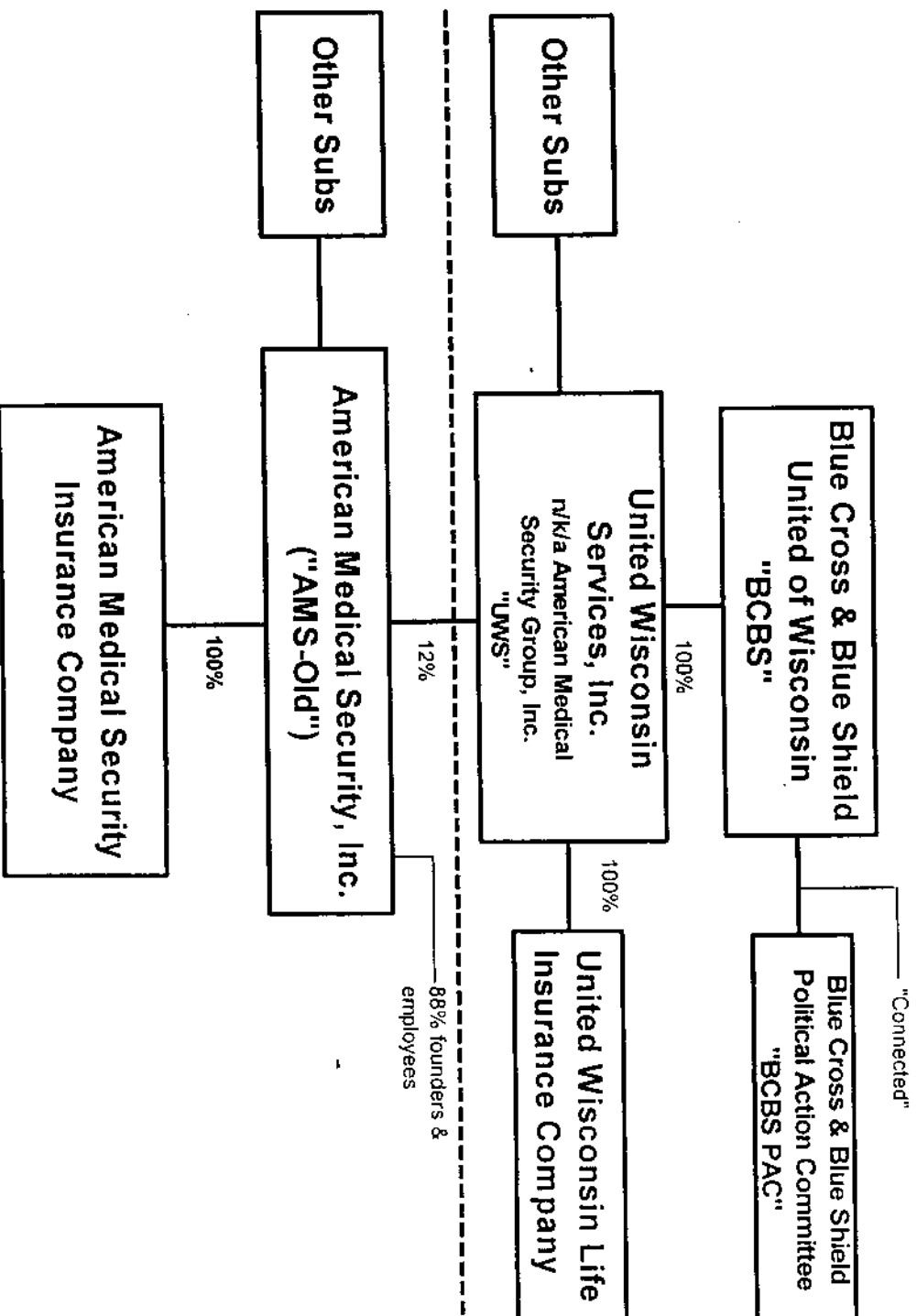
LA FOLLETTE GODFREY & KAHN



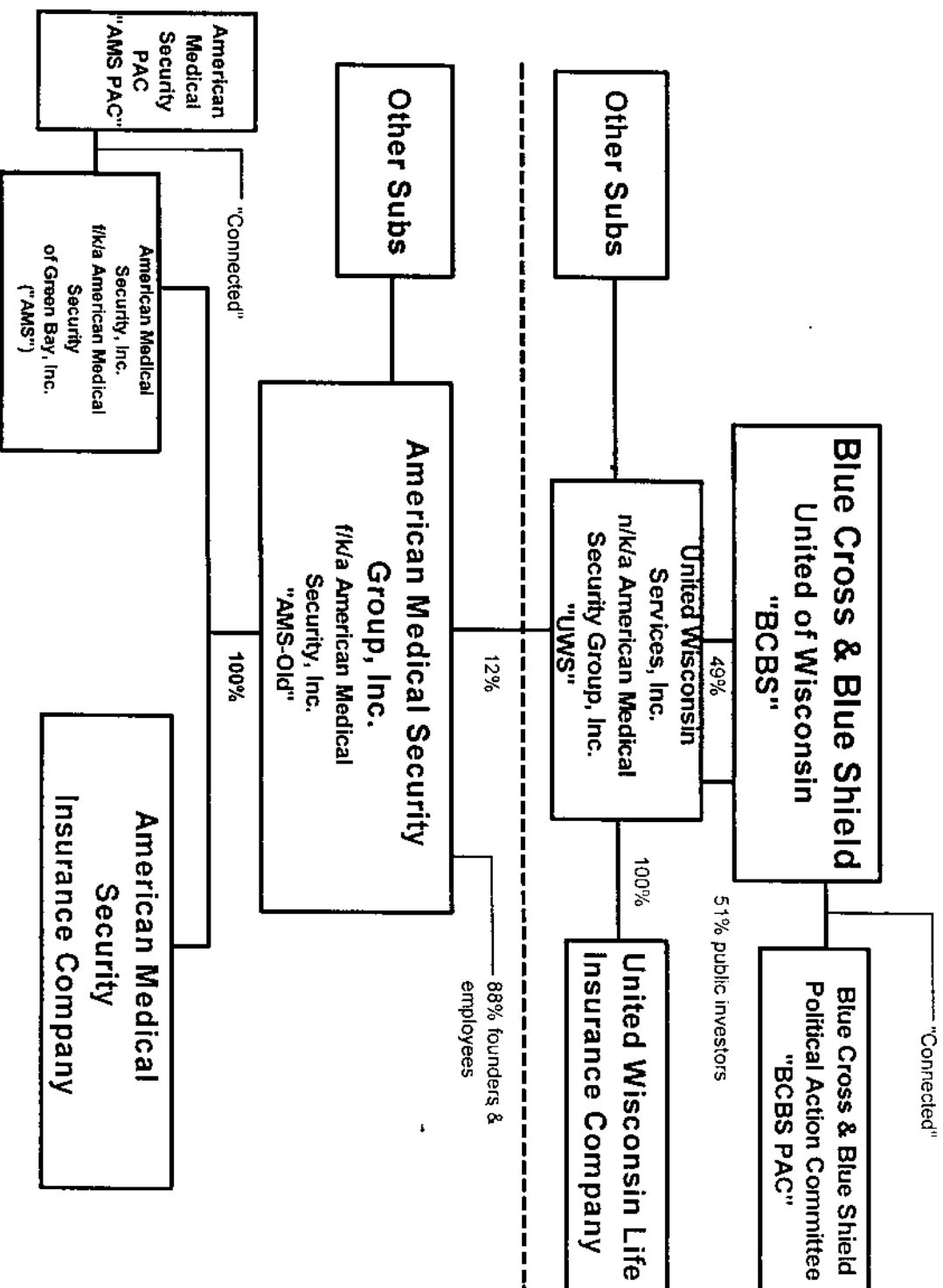
Brady C. Williamson
Mike B. Wittenwyler

MBW:jrk
Enclosures

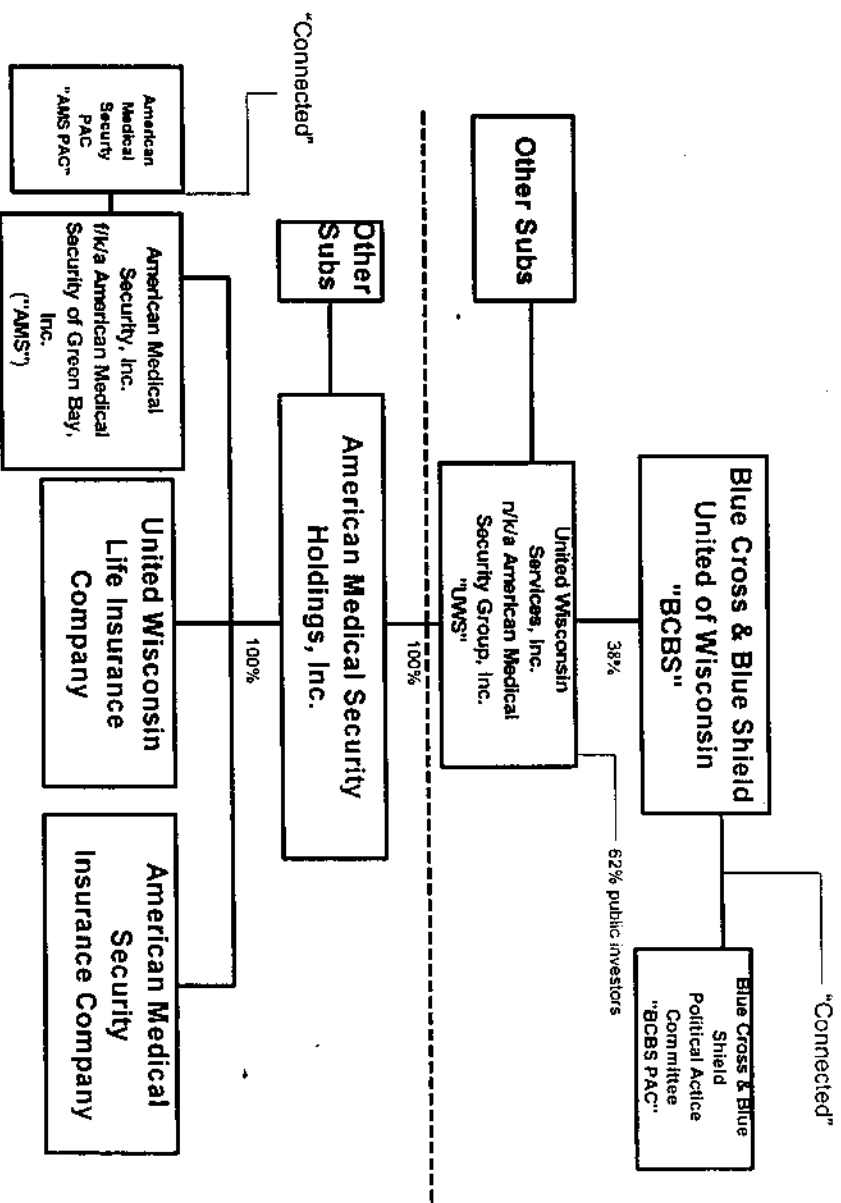
1988 Organization Chart



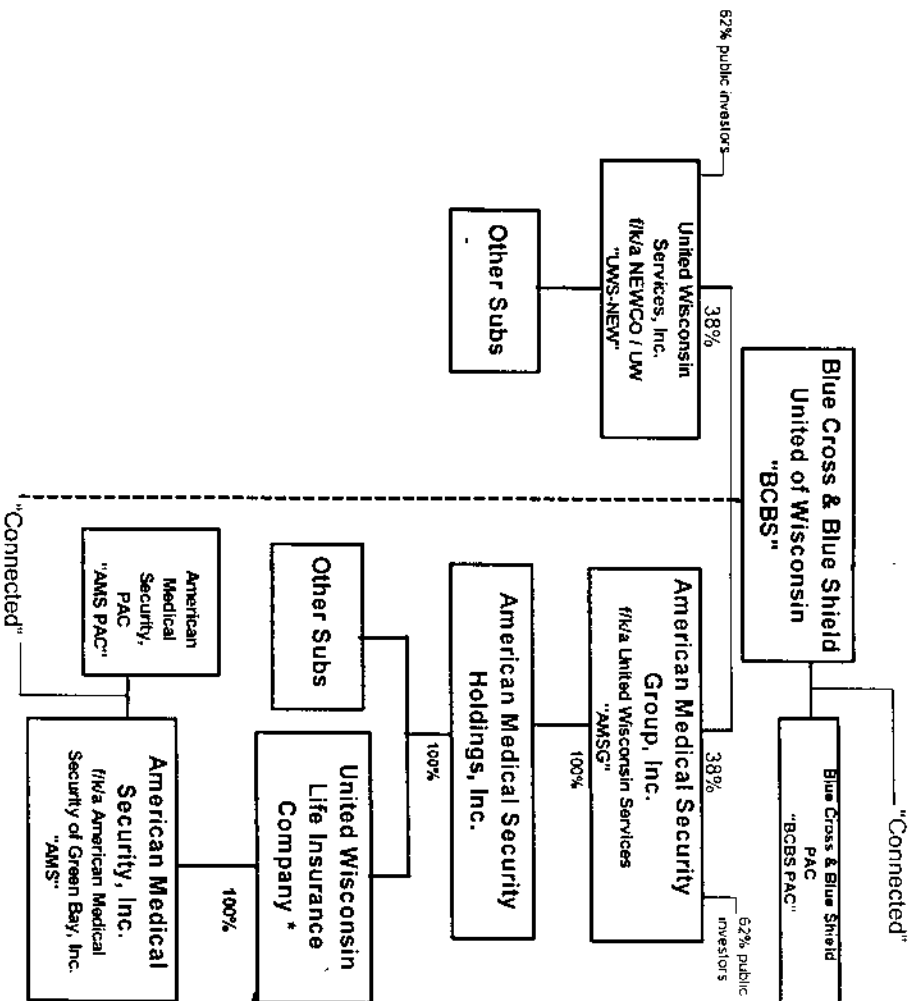
1995 Organization Chart



1996 Organization Chart



1998 Organization Chart



* United Wisconsin Life Insurance Company & American Medical Security Insurance Company merged 3/31/97.

2001 Organization Chart

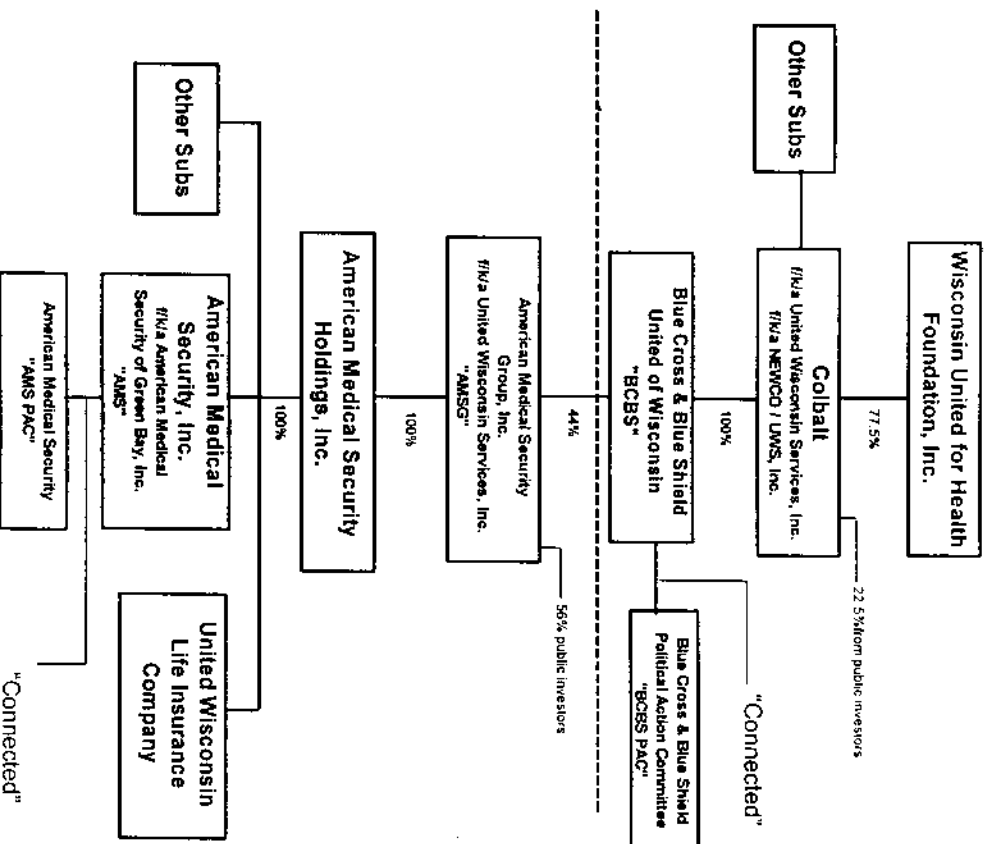


EXHIBIT B

BLUE CROSS BLUE SHIELD ASSOCIATION (BLUEPAC) AND PLAN AFFILIATED FEDERAL POLITICAL ACTION COMMITTEES

"BluePac" - The Blue Cross and Blue Shield Association Political Action Committee (4/8/1985) COO194746, Kathy Didawick, Treasurer
Blue Cross and Blue Shield Association
1310 G Street, N.W., Washington, D.C. 20005

1. **Healthy Government Committee, The Political Action Committee of Blue Cross and Blue Shield of Arizona**
(5/26/1987) COO215202, Tony Astorga, Treasurer
Blue Cross and Blue Shield of Arizona
Post Office Box 13466, Phoenix, Arizona 85002
2. **Blue Shield California**
COO340364, Leslie J. Davis, Treasurer
Blue Shield of California
50 Beale Street, San Francisco, California 94105
3. **Florida Health Political Action Committee**
(12/11/1986) COO161141, James Mandeville, Treasurer
Blue Cross and Blue Shield of Florida
532 Riverside Avenue, Jacksonville, Florida 92202
4. **Hawaii Medical Service Association Employees' Committee for Quality Health Care**
COO321992, Steve Van Lier Ribbink, Treasurer
Hawaii Medical Service
818 Keeaumoku Street, Honolulu, Hawaii 96814
5. **Regence BluePAC**
(7/10/1991) COO252684, R. Paul Warburton, Treasurer
The Regence Group (Blue Shield Idaho, Oregon, Utah, Blue Shield Washington)
2890 East Cottonwood Parkway Department #8, Salt Lake City, Utah 84121
6. **Blue Cross and Blue Shield of Illinois Political Action Committee**
(12/2/1985) COO199711, Brian Van Vlierbergen, Treasurer
Blue Cross and Blue Shield of Illinois
233 North Michigan Avenue, Chicago, Illinois 60690
7. **Anthem Insurance Companies Inc Good Government Program PAC**

(9/30/1986) COO198069, George D. Martin, Treasurer
Anthem Blue Cross and Blue Shield (Colorado, Connecticut, Indiana,
Kentucky,
Nevada, New Hampshire, Ohio) Associated Insurance Companies, Incorporated
120 Monument Circle, Indianapolis, Indiana 46204-4903

8. **Wellmark, Incorporated PAC, WellPac**
(1/1/1999) COO342022, Sandy Smitherman, Treasurer
Wellmark (Iowa, South Dakota)
636 Grand Avenue, Station 13, Des Moines, Iowa 50309
9. **Blue Cross and Blue Shield of Kansas Employee PAC, CarePAC**
(8/7/1985) COO197202, Keith Zachariasen, Treasurer
Blue Cross and Blue Shield of Kansas
1133 Topeka Boulevard, Topeka, Kansas 66629-0001
10. **Blue Cross and Blue Shield of Maryland Employees' Political Action Committee**
(1/5/1994) COO286922, Gary Baker, Treasurer
CareFirst Blue Cross and Blue Shield (Maryland, National Capital Area)
10455 Mill Run Circle, Owings Mills, Maryland 21117
11. **Federal CarePAC, The Blue Cross and Blue Shield of Massachusetts Political Action Committee**
(11/15/1985) COO199166, Meghan Farrell, Treasurer
Blue Cross and Blue Shield of Massachusetts
100 Summer Street, Boston, Massachusetts 02110
12. **Blue Cross and Blue Shield of Michigan Political Action Committee (BCBSM PAC)**
(5/29/1981) COO084061, Dale Robertson, Treasurer
Blue Cross and Blue Shield of Michigan
600 Lafayette East, Detroit, Michigan 48226-2298
13. **Blue Cross and Blue Shield of Kansas City Federal Political Action Committee**
COO301358, William Pittsenberger, Treasurer
Blue Cross and Blue Shield of Kansas City
2301 Main, Kansas City, Missouri 64108-2488
14. **Blue Cross and Blue Shield of Nebraska Political Action Committee**
(9/28/1992) COO276311, David Realph, Treasurer
Blue Cross and Blue Shield of Nebraska
7261 Mercy Road, Omaha, Nebraska 68180-0001
15 - Blue Cross and Blue Shield of North Carolina Employee Political Action

Committee

(1/31/1996) COO312223, Bradley T. Adcock, Treasurer
Blue Cross and Blue Shield of North Carolina
5901 Chapel Hill Road, Box 2291, Durham, North Carolina 27702

16. **BluePAC, Capital, Independence, Northeastern, and Western Pennsylvania Blue Cross Plans PAC**
(10/23/1992) COO270967, Brenda H. McLaughlin, Treasurer
2500 Elmerton Avenue, Harrisburg, Pennsylvania 17177
17. **Highmark Health PAC of Highmark Blue Cross Blue Shield**
(6/1/1995) COO302844, William C. Dunn, Treasurer
Highmark Blue Cross Blue Shield (Camp Hill, Pittsburgh)
1800 Center Street, Camp Hill, Pennsylvania 17011
18. **Blue Cross and Blue Shield of Texas, Inc. Federal Political Action Committee**
(5/24/1990) COO236323, Vernon Walker, Treasurer
Blue Cross and Blue Shield of Texas
901 South Central Expressway, Richardson, Texas 75080
19. **Trigon Blue Cross Blue Shield Federal Political Action Committee**
(4/1/1987) COO211375, Leonard L. Hopkins, Jr., Treasurer
Trigon Blue Cross Blue Shield/Virginia
2015 Staples Mill Road, Richmond, Virginia 23230
20. **Blue Cross and Blue Shield United of Wisconsin Political Action Committee**
(3/29/1981) COO135202, Gail L. Hanson, Treasurer
Blue Cross and Blue Shield United of Wisconsin
401 West Michigan Street, Milwaukee, Wisconsin 53203

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 6, 2002

Brady C. Williamson
Mike B. Wittenwyler
LaFollette, Godfrey & Kahn
One East Main Street
P.O. Box 2719
Madison, WI

Dear Mr. Williamson:

This refers to your letter dated January 31, 2002, concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the possible disaffiliation of the separate segregated funds ("SSFs") of American Medical Security, Inc. ("AMS") and Blue Cross & Blue Shield United of Wisconsin ("BCBS").

You state that, due to a series of organizational changes involving AMS and BCBS, AMS PAC and BCBS PAC are no longer affiliated. These actions included the 1998 spin-off by old United Wisconsin Services ("UWS-Old") of the companies that became the new United Wisconsin Services, Inc. ("UWS-New") (with UWS-Old taking the name of American Medical Society Group - "AMSG"), and the 2001 conversion of BCBS from a 47 percent owner of UWS-New to a wholly owned subsidiary of UWS-New which was renamed Cobalt Corporation after BCBS converted to a stock insurance corporation. AMSG, which at the time of the conversion was 44 percent owned by BCBS and is now 45 percent owned by Cobalt through BCBS, owns 100 percent of AMS.

The Act authorizes the Commission to issue an advisory opinion request in response to a "complete written request" from any person with respect to a specific transaction or activity by the requesting person. 2 U.S.C. §437f(a). Commission regulations explain that such a request "shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made." 11 CFR 112.1(c). You make a number of factual assertions in support of a conclusion that the SSFs are no longer affiliated. You apply a number of the factors at 11 CFR 100.5(g)(4)(ii). Nevertheless, further information will be needed for your request to include a complete description of the relevant facts. Please provide responses to the following questions and requests for documents:

(1) In describing the relationship or lack thereof between the "BCBS entities" and the "AMS entities," state whether you mean all firms within the BCBS group and the AMS

group or just the three entities you specify as being within each of those groups. If your description applies only to the three specified entities within each group, then amend your descriptions to include the other firms within each of those groups.

(2) With respect to the asserted lack of overlap of directors, officers, and employees between the BCBS entities and the AMS entities, state whether this means that individuals who may fit one of those three categories within one group do not fall within another category in the other group (e.g., an officer in one group and a director in another group). State whether there are any formal or informal agreements whereby an officer or employee in the AMS group will move or return to the BCBS group after working in the AMS group, or vice versa.

(3) Please state more specifically the voting requirements (e.g., plurality, majority, supermajority, cumulative voting) in the AMS entities for the passage of all corporate measures, including, but not limited to, the election of directors and the taking of other measures entailing a shareholder vote. State where in corporate governance documents (e.g., articles of incorporation, by-laws) these requirements are located.

(4) Describe all the provisions in the governing documents of the BCBS entities and the AMS entities that give rights to, or provide for responsibilities for, Cobalt or BCBS for having a specific amount of equity ownership in AMSG. State where in corporate governance documents these provisions are located. State also whether any specific voting agreements exist with respect to the ownership interest of Cobalt or BCBS in AMSG, and describe those agreements.

(5) Explain the increase in BCBS' ownership in AMSG since 1998 (when it was 38 percent). State whether there is a likelihood or possibility that such ownership by the BCBS entities will increase further or exceed 50 percent in the future. (This office does note a decrease from 46.5 percent to 45 percent from the end of 2000 to the present). State also the current percentage of overlap between the owners of stock in the BCBS entities and the AMS entities, and the possibility of an increase or decrease in that percentage.

(6) Describe the relationship of the AMS entities to the national Blue Cross Blue Shield Association, including whether the AMS entities are subject to the membership standards, licensing agreements, and other conditions referred to in Advisory Opinion 1999-39.

Please enclose copies of the articles of incorporation and by-laws of Cobalt, BCBSA, AMSG, and AMS, and any other governing documents you deem relevant. Please also enclose copies of any specific provisions described in your responses to the above questions that are not included in the aforementioned documents.

Upon receipt of your responses and the documents, this office will give further consideration to your inquiry. If you have any questions about the advisory opinion

Letter to Brady C. Williamson and Mike B. Wittenwyler
Page 3

process, the enclosed materials, or this letter, please contact Jonathan Levin at 202-694-1650.

Sincerely,

Lawrence H. Norton
General Counsel

By: N. Bradley Litchfield / *RC Smith*
N. Bradley Litchfield
Associate General Counsel

Enclosure
Advisory Opinion 1999-39

July 24, 2002

VIA FEDERAL EXPRESS

N. Bradley Litchfield
Associate General Counsel
Federal Election Commission
999 E Street N.W.
Washington D.C. 20463

Request for Disaffiliation:
American Medical Security, Inc. and
Blue Cross & Blue Shield United of Wisconsin

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
JUL 25 3 48 PM '02

Dear Mr. Litchfield:

In response to your February 6, 2002 letter, we write to answer the questions you presented and enclose the additional information you requested. As we discussed with members of your staff earlier this year, we deferred responding to your inquiry until the completion of several corporate actions relevant to the requested disaffiliation. These activities, described below, concluded in June, and it is now appropriate for us to ask you to give further consideration to our request.

RECENT EVENTS

Since the original request for an advisory opinion on January 31, 2002, a series of events has reinforced our opinion that the American Medical Security, Inc. PAC (the "AMS PAC") and the Blue Cross & Blue Shield United of Wisconsin Political Action Committee (the "BCBS PAC") are no longer maintained or controlled within a common organization. Indeed, these events further demonstrate that the separate segregated funds ("SSFs") are connected to separate and independent sponsoring organizations and should no longer be subject to the Commission's rules on affiliation.

First, we bring to your attention a March 19, 2002 stock purchase agreement (the "Stock Purchase Agreement") between American Medical Security Group, Inc. ("AMSG") and Cobalt Corporation ("Cobalt") under which AMSG repurchased 1,400,000 of its shares owned by Blue Cross & Blue Shield United of Wisconsin ("BCBS"), a wholly owned subsidiary of Cobalt.¹ (A

¹ You will recall that American Medical Security, Inc. ("AMS"), a wholly-owned subsidiary of American Medical Security Group, Inc., is the sponsoring organization of the AMS PAC and that BCBS is the sponsoring organization of the BCBS PAC.

N. Bradley Litchfield
Federal Election Commission
July 24, 2002
Page 2

copy of the Stock Purchase Agreement is enclosed as Exhibit E.) The enclosed June 4, 2002 Form 8-K filed with the Securities and Exchange Commission on June 19, 2002, *see* Exhibit A, describes the event: the repurchase of shares closed on March 22, 2002 and reduced BCBS's ownership position in AMSG to approximately 39 percent. Through a secondary offering, also pursuant to the Stock Purchase Agreement, BCBS sold 3,001,500 shares of AMSG on June 4, 2002, further reducing BCBS's ownership position in AMSG to approximately 15.1 percent.

Pursuant to the Stock Purchase Agreement, Cobalt/BCBS is entitled to designate one nominee to the AMSG board of directors so long as BCBS holds at least 10 percent of the outstanding and issued AMSG common stock. *See* Exhibit E, Section 6.01. Accordingly, Kenneth L. Evason became a member of AMSG's board of directors on March 22, 2002. However, Mr. Evason (or his successor) is obligated to resign effective immediately upon the date the BCBS's ownership interest in AMSG is reduced to less than 10 percent. Moreover, Mr. Evason is *not* an officer, director or employee of Cobalt, BCBS or any of the other BCBS entities, and he is only one of 13 AMSG board members.

ANSWERS TO QUESTIONS

In direct response to the questions raised in your February 6, 2002 correspondence:

- 1. In describing the relationship or lack thereof between the "BCBS entities" and the "AMS entities," state whether you mean all firms within the BCBS group and the AMS group or just the three entities you specify as being within each of those groups. If your description applies only to the three specified entities within each group, then amend your descriptions to include the other firms within each of those groups.**

BCBS is now a 15.1 percent shareholder in AMSG, as you know, and AMS and BCBS each sponsors an SSF – the AMS PAC and the BCBS PAC – currently designated as affiliated. There also are reinsurance agreements in place between the AMS entities and the BCBS entities. *See* Exhibit B, AMSG Proxy Statement, "Reinsurance Agreements and Certain Insurance Policies," p. 22.

Except for these instances, there is *no* relationship between *any* entity within the AMS group and the BCBS group.² No entity within the AMS group and no entity within the BCBS group are otherwise connected.

² As the terms are used in this letter and in our January 31, 2002 correspondence, the "AMS entities" and the "BCBS entities" refer to *all* entities within the respective organizations – not just the six entities enumerated in our original correspondence.

- 2. With respect to the asserted lack of overlap of directors, officers, and employees between the BCBS entities and the AMS entities, state whether this means that individuals who may fit one of those three categories within one group do not fall within another category in the other group (e.g., an officer in one group and a director in another group). State whether there are any formal or informal agreements whereby an officer or employee in the AMS group will move or return to the BCBS group after working in the AMS group, or vice versa.**

There is absolutely *no* overlap between the directors, officers and employees of either the AMS group or the BCBS group. That is, there is not a director, officer or employee in any of the AMS entities who is also a director, officer or employee in any of the BCBS entities, or vice versa. Similarly, there are no formal or informal agreements between any AMS entity or BCBS entity for officers or employees to move between the AMS group and the BCBS group, or vice versa.

As noted above, the Stock Purchase Agreement resulted in Cobalt/BCBS nominating Mr. Evason to the AMSG board of directors. However, while Mr. Evason is a Cobalt/BCBS nominee to the AMSG board, he is *not* a director, officer or employee of any BCBS entity.³ (Mr. Evason is the president and chief executive officer of Jacobus Wealth Management, an investment management company.)

- 3. Please state more specifically the voting requirements (e.g., plurality, majority, supermajority, cumulative voting) in the AMS entities for the passage of all corporate measures, including, but not limited to, the election of directors and the taking of other measures entailing a shareholder vote. State where in corporate governance documents (e.g., articles of incorporation, by-laws) these requirements are located.**

Depending on the activity, corporate approval of a measure in the AMS entities either requires a plurality or super-majority vote. Enclosed are the articles and bylaws for AMSG as well as AMS with the provisions concerning voting requirements noted below for each document.

Exhibit G	AMSG Articles of Incorporation (Article V)
Exhibit H	AMSG Bylaws (Sections 2.08 and 2.09)
Exhibit J	AMS Bylaws (Sections 3.09 and 14)

³ Pursuant to the Stock Purchase Agreement, Thomas R. Hefty, Cobalt's president, chairman and chief executive officer, did serve as a member of the AMSG board of directors between March 22 and June 4, 2002. See Exhibit A, Form 8-K. The Stock Purchase Agreement required Mr. Hefty's resignation effective on the date that Cobalt/BCBS owned less than 20 percent of AMSG – which occurred on completion of the secondary offering on June 4, 2002.

- 4. Describe all [of] the provisions in the governing documents of the BCBS entities and the AMS entities that give rights to, or provide for responsibilities for, Cobalt or BCBS for having a specific amount of equity ownership in AMSG. State where in corporate governance documents these provisions are located. State also whether any specific voting agreements exist with respect to the ownership interest of Cobalt or BCBS in AMSG, and describe those agreements.**

No BCBS entity is guaranteed a specific amount of equity ownership in AMSG. Moreover, under a Registration Rights Agreement entered into on September 1, 1998, BCBS, without the written consent of AMSG, cannot purchase or otherwise acquire any additional shares of AMSG (other than as a result of any stock dividend or distribution or pursuant to the reinvestment of dividends under the dividend reinvestment and direct stock purchase plan) until July 31, 2008. AMSG does not pay dividends, and its dividend reinvestment and direct stock purchase plan has been terminated. (A copy of the Registration Rights Agreement is enclosed as Exhibit F, *see* Article II.)

The Stock Purchase Agreement also contains certain standstill provisions and voting agreements that restrict the activities of any BCBS entity. As described in Article 4 of the Stock Purchase Agreement, *see* Exhibit E, BCBS is prohibited from acquiring any additional shares or "otherwise act[ing] to control or seek control" of AMSG.

- 5. Explain the increase in BCBS' ownership in AMSG since 1998 (when it was 38 percent). State whether there is a likelihood or possibility that such ownership by the BCBS entities will increase further or exceed 50 percent in the future. (This office does note a decrease from 46.5 percent to 45 percent from the end of 2000 to the present). State also the current percentage of overlap between owners of stock in the BCBS entities and the AMS entities, and the possibility of an increase or decrease in that percentage.**

The answer to this question is evident in the decrease in BCBS ownership in AMSG just this year (from 45 percent to 39 percent to 15.1 percent). The possibility of an increase in BCBS ownership is extremely unlikely. According to Mr. Hefty, Cobalt's president, chairman and CEO, "AMS is no longer a strategic asset of Cobalt," and the recent actions under the Stock Purchase Agreement permitted Cobalt to "reduce [its] position in an orderly fashion." *See* enclosed Exhibit D, Cobalt's March 20, 2002 news release on the Stock Purchase Agreement. To that end, the terms of the shareholder rights plan effectively prevent the BCBS entities from acquiring additional shares of AMSG or forming a group for the purpose of effecting control of AMSG.

The temporary increase in percentage ownership of AMSG shares by BCBS after 1998 came in connection with an earlier stock repurchase program instituted by ASM. Beginning in August

1999 and ending in November 2001, AMSG repurchased approximately 2,750,000 shares. While the number of shares held by BCBS remained constant at 6,309,525 for a time, BCBS's ownership percentage in AMSG increased proportionately (and temporarily) from 38 percent to 45 percent – solely as a result of a reduction in the total number of AMSG shares outstanding.

Immediately after the spin-off of AMSG in September 1998, the shareholders of AMSG and UWS (now Cobalt) would have been identical – BCBS held 38 percent of each company, and the remaining 62 percent of each company was held by other, but identical, public investors. While it is likely that there continues to be some overlap of ownership by public investors, the overlap is difficult to identify because most shareholders hold their stock beneficially through brokerage firms. Based on the beneficial ownership tables published in Cobalt's and AMSG's 2002 proxy statements, however – which show ownership by officers, directors, and 5 percent shareholders – there is no overlap greater than 5 percent.⁴ See enclosed Exhibit B, AMSG Proxy Statement, p. 8, and Exhibit C, Cobalt Proxy Statement, p. 3.

Other than the foregoing, there is no overlap between the owners of stock in the AMSG and the BCBS entities.

6. Describe the relationship of the AMS entities to the national Blue Cross Blue Shield Association, including whether the AMS entities are subject to the membership standards, licensing agreements, and other conditions referred to in Advisory Opinion 1999-39.

The AMS entities are *not* subject to *any* of the restrictions set by the national Blue Cross Blue Shield Association. Except for the AMS PAC's designated affiliation with the BCBS PAC, there is no relationship between any of the AMS entities and the Blue Cross Blue Shield Association.

⁴ Note that Mr. Hefty – who will be retiring later this year – does own 1.4 percent of the shares of AMSG and Cobalt. In each instance, however, a significant portion of his ownership is in the form of stock options.

N. Bradley Litchfield
Federal Election Commission
July 24, 2002
Page 6

At your request, we also enclose the articles of incorporation and bylaws for AMSG (Exhibit G and Exhibit H), AMS (Exhibit I and Exhibit J), Cobalt (Exhibit K and Exhibit L), and BCBS (Exhibit M and Exhibit N). Please let us know if you have any other questions or need any additional information. We are always ready to discuss this matter with you to facilitate your consideration of our request for an advisory opinion on disaffiliation.

Sincerely,

LA FOLLETTE GODFREY & KAHN


Brady C. Williamson
Mike B. Wittenwyler

MBW: jrk
Enclosures

cc: Jonathan Levin (w/ enclosures) (via Federal Express)

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Jonathan Levin
08/02/2002 11:10 AM

To: bwilliam@gklaw.com, mwittenw@gklaw.com
cc: Rosie Smith/FEC/US@FEC, John Vergelli/FEC/US@FEC, Mai Dinh/FEC/US@FEC
Subject: Follow-up Questions to Your July 24 Letter

To: Brady C. Williamson and Mike B. Wittenwyler:

On January 31, 2002, you sent a letter to the Office of General Counsel requesting an advisory opinion concerning the relationship of AMS PAC to BCBS PAC. On February 6, this office sent a letter with further questions and requests for documents pertaining to the relationship between the AMS entities and the BCBS entities. That letter explained that the Act authorizes the Commission to issue an advisory opinion in response to a "complete written request," which includes "a complete description of all facts relevant to the specific transaction or activity." 2 U.S.C. 437f(a); 11 CFR 112.1(c).

This office has received your letter dated July 24, along with documents. This letter consists of responses to our questions of February 6, 2002, and a discussion of how the relationship of the AMS entities and BCBS entities has changed since February 2002. The documents provide significant additional information. After reviewing your July letter and the documents, this office is asking a few more questions in order to obtain a complete description of the relevant facts. In a phone conversation on July 30, Mr. Wittenwyler and I discussed these questions and, as promised in that conversation, they are now being sent for your written response.

- (1) State whether BCBS PAC (along with the PACs of the other Blue Cross entities) and AMS PAC share any personnel, e.g., officers, employees, or volunteers, or PAC board members, and state who they are. Your answer should include those who were with one PAC and are now with the other, as well as current overlaps. Describe all other relationships between the two PACs, including consultation on activities (such as what candidates should receive support).
- (2) You have described the ownership of common stock over the years with respect to the corporations involved. State the ownership percentages by the companies of one set of entities in the companies of the other set with respect to preferred stock, and all other classes beside "common," since 1996.
- (3) In your January 2002 letter, you describe the lack of board, officer, and employee overlap between the AMS entities and the BCBS entities existing at that time. In your July letter, you describe the small overlap that existed between March and June 2002, and the current presence of Mr. Evason on the AMSG board. Describe the overlaps that existed during the time period starting just before the 1998 spin-off and ending in early 2002.

(4) You state that the only presence of the board members, officers, or employees of the AMS entities in the BCBS entities is Mr. Evason who serves on the AMSG board as a representative of the BCBS entities but is not a board member, officer, or employee of those entities. State the other AMS entities on whose Board Mr. Evason serves, and state the size of such boards.

(5) With respect to the finding of one organization by the other under 11 CFR 100.5(g)(4)(ii)(G)-(H), you state that, as of January 2002, there is no cross-subsidization or funding. Nevertheless, there is a discussion of certain arrangements on page 22 of the AMS proxy (which you refer to in your July 24 letter). Describe these arrangements briefly and describe all other current arrangements between the AMS entities and the BCBS entities that involve the provision of funds or the arrangement or causation by one set of entities for the provision of funds to the other set of entities.

(6) In the discussion of Cobalt's equity incentive plan, the Cobalt proxy statement defines AMSG and its subsidiaries as "affiliates." Please explain the significance of this term and the role of the AMS entities in this plan.

Upon the receipt of complete responses to these questions, this office and the Commission will give further consideration to your letters as an advisory opinion request. If you have any questions about this letter or the advisory opinion process, please contact me at 202-694-1542.

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
SEP 5 12 56 PM '02

September 3, 2002

VIA FEDERAL EXPRESS

Rosemary C. Smith
Acting – Associate General Counsel
Federal Election Commission
999 E Street N.W.
Washington D.C. 20463

Request for Disaffiliation:
American Medical Security, Inc. and
Blue Cross & Blue Shield United of Wisconsin

Dear Ms. Smith:

In response to the Federal Election Commission's August 2, 2002 correspondence, we write to answer the questions presented:

- (1) **State whether BCBS PAC (along with the PACs of the other Blue Cross entities) and AMS PAC share any personnel, e.g., officers, employees, or volunteers, or PAC board members, and state who they are. Your answer should include those who were with one PAC and are now with the other, as well as current overlaps. Describe all other relationships between the two PACs, including consultation on activities (such as what candidates should receive support).**

The BCBS PAC (as well as the PACs of any other Blue Cross entity) and AMS PAC do not share any personnel. Moreover, no officers, directors or employees of the AMS PAC have ever served as officers, directors or employees of the BCBS PAC or any other BCBS entity, or vice versa. The only relationship between the AMS PAC and the BCBS PAC is occasional communication between AMS governmental affairs employees and BCBS governmental affairs employees, on behalf of their respective PACs, to determine if any federal contribution limits to a particular candidate would be exceeded in making a particular PAC contribution by virtue of their current "affiliate" relationship.

- (2) **You have described the ownership of common stock over the years with respect to the corporations involved. State the ownership percentages by the companies of one set of entities in the companies of the other set with respect to preferred stock, and all other classes beside "common," since 1996.**

Rosemary C. Smith
Federal Election Commission
September 3, 2002
Page 2

Except for the ownership of AMSG common stock by BCBS (as fully described in our earlier correspondence), there has been no ownership of preferred stock or any other class of stock by any BCBS entity, or vice versa.

- (3) In your January 2002 letter, you describe the lack of board, officer, and employee overlap between the AMS entities and the BCBS entities existing at that time. In your July letter, you describe the small overlap that existed between March and June 2002, and the current presence of Mr. Evason on the AMSG board. Describe the overlaps that existed during the time period starting just before the 1998 spin-off and ending in early 2002.**

Prior to the spin-off of AMSG in 1998, Samuel V. Miller, chairman and chief executive officer of AMSG, was an executive vice president of UWS as well as an officer and director of various AMS entities. Mr. Miller was not, however, elected as an officer of UWS-New or any other BCBS entity after the spin-off and has not held any positions in a BCBS entity.

Prior to the spin-off of AMSG in 1998, five UWS employees and two independent UWS directors were also officers and directors of AMS entities. In connection with the spin-off, however, each individual resigned their respective positions with the AMS entities on September 25, 1998. These individuals are:

- American Medical Security Holdings, Inc. ("AMS Holdings")
 - Thomas R. Hefty, director (also a UWS/BCBS officer and director)
 - Gail L. Hanson, vice president and asst. secretary (also a UWS/BCBS officer)
 - Eugene A. Menden, director (also a UWS independent director)
 - William R. Johnson, director (also a UWS independent director)
- United Wisconsin Life Insurance Company (a subsidiary of AMS Holdings)
 - Thomas R. Hefty, director and officer (also a UWS/BCBS officer and director)
 - Mark H. Granoff, director and officer (also UWS/BCBS officer)
 - C. Edward Mordy, director and officer (also a UWS/BCBS officer)
 - Roger A. Formisano, director and officer (also a UWS officer)
 - Gail L. Hanson, director and officer (also a UWS/BCBS officer)

Since the spin-off of AMSG in 1998, three independent AMSG directors – not employees – also served as directors of a BCBS entity. Those three AMSG directors and the period of the overlapping positions are:

- Bill Johnson (1993 to current)
 - director of UWS-New (1998 to May 2000)
- Jim Hickman (1991 to current)
 - director of UWS-New (1998 to March 2001)
 - director of BCBS (1986 to March 2001)
- Gene Menden (1991 to current)
 - director of BCBS (1987 to 1992)
 - director of UWS-New (1998 to March 2001)

- (4) **You state that the only presence of the board members, officers, or employees of the AMS entities in the BCBS entities is Mr. Evason who serves on the AMSG board as a representative of the BCBS entities but is not a board member, officer, or employee of those entities. State the other AMS entities on whose Board Mr. Evason serves, and state the size of such boards.**

Mr. Evason does not serve on the board of directors of any other AMS entity, nor is he connected with any other AMS entity in any other capacity.

- (5) **With respect to the finding of one organization by the other under 11 CFR 100.5(g)(4)(ii)(G)-(H), you state that, as of January 2002, there is no cross-subsidization or funding. Nevertheless, there is a discussion of certain arrangements on page 22 of the AMS proxy (which you refer to in your July 24 letter). Describe these arrangements briefly and describe all other current arrangements between the AMS entities and the BCBS entities that involve the provision of funds or the arrangement or causation by one set of entities for the provision of funds to the other set of entities.**

With regard to AMSG's worker's compensation, employer's liability insurance, long-term disability and executive medical reimbursement insurance policies underwritten by BCBS entities (Cobalt subsidiaries), these insurance policies are purchased by AMSG on an arm's length basis after reviewing market-based quotes from competing insurers. There is no agreement or understanding that the purchase of these insurance policies by AMSG will continue in the future.

Rosemary C. Smith
Federal Election Commission
September 3, 2002
Page 4

With regard to the reinsurance agreements, these arrangements exist to satisfy state insurance licensing requirements. For a company to sell health or other insurance products, the company needs to be licensed by the state in which it sells the insurance, and the policies and forms under which the insurance is sold need to be approved by the state. Prior to the spin-off of AMSG in 1998, there were a limited number of situations in which the AMS operations or the UWS operations used each others' licensed insurance subsidiaries to underwrite the insurance sold. In those instances, a reinsurance agreement was entered into so that the operating entity selling the insurance would assume the risk from the licensed insurance company. The continuation of payments under the reinsurance agreements since the spin-off relates to insurance that is renewed on an annual basis and is *not* the result of new sales. Payments under the reinsurance agreements by AMSG to Cobalt were only \$362.00 in 2001 and are expected to be zero in 2002. Payments under the reinsurance agreements by Cobalt to AMSG have been decreasing, but at a slower rate. There is no understanding between AMSG and Cobalt that these arrangements will be expanded in the future. To the contrary, they will ultimately expire.

(6) In the discussion of Cobalt's equity incentive plan, the Cobalt proxy statement defines AMSG and its subsidiaries as "affiliates." Please explain the significance of this term and the role of the AMS entities in this plan

In connection with the spin-off of AMSG in 1998, three individuals (Mr. Miller and two former AMS employees) were granted options to purchase shares in both AMSG and UWS-New (now Cobalt). These individuals were *not*, however, employees of UWS-New. Accordingly, for these individuals to be governed by the terms of the UWS-New stock option plan (the Equity Incentive Plan ("EIP")), the plan contains language to incorporate these particular options.

Because BCBS owned 38 percent of both AMSG and UWS-New at the time of the spin-off, the drafters of the EIP considered AMSG and its subsidiaries as "affiliates." Since the spin-off in 1998, the UWS-New/Cobalt options held by the two former AMS employees have expired and were never exercised. And, since the spin-off, Mr. Miller has exercised *all* of his options and sold the Cobalt stock that he acquired by exercising the options.

No employees of AMSG or any other AMS entity have been granted benefits under the EIP since the spin-off, nor are any employees expected to be granted options under the EIP in the future. In fact, the definition of "affiliate" in the plan only relates to options granted in connection with the "distribution" (the spin-off of AMSG in 1998), and the EIP does not contemplate additional grants to any employees of an AMS entity. The term has no other corporate implications and no campaign finance law implications.

Rosemary C. Smith
Federal Election Commission
September 3, 2002
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Please let us know if you have any other questions or need any additional information.

Sincerely,

LA FOLLETTE GODFREY & KAHN

A handwritten signature in black ink, appearing to read "M. B. Wittenwyler", written over the printed name.

Brady C. Williamson
Mike B. Wittenwyler

MBW: jrk
Enclosures

cc: Jonathan Levin (via Federal Express)

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